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| A. General | |
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| 1. Definitions | 1.1 In the Conditions of Contract, which include Particular Conditions and these General Conditions, the following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined terms:<br>(a) Act means The Public Procurement Act, 2006 (Act 24 of 2006).<br>(b) Adjudicator is the expert appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in GCC Sub Clause 82.2.<br>(c) Completion means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Pre-Commissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning<br>(d) Completion Schedule means the fulfilment of the Related Services by the Contractor in accordance with the terms and conditions set forth in the Contract;<br>(e) Start Date is the date according to GCC Clause 28.1 and it is the last date when the Contractor shall commence execution of the goods/works/services under the Contract.<br>(f) Intended Completion Date is the date calculated from the Commencement Date according to GCC Clause 29.1, on which it is intended that the Contractor shall complete the Works and Physical services as specified in the Contract and may be revised only by the Project Manager by issuing an extension of time or an acceleration order.<br>(g) Effective Date means the date of fulfilment of all conditions of the Contract Agreement, from which the Time for Completion shall be counted.<br>(h) Completion Certificate means the Certificate issued by the Project Manager as evidence that the Contractor has executed the services in all respects as per design, drawing, specifications and Conditions of Contract.<br>(i) Time for Completion means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, in accordance with the relevant provisions of the Contract.<br>(j) Variation means any change to the plant and services directly procured from the original Contractor to cover increases or decreases in quantities, including the introduction of new work items that are either due to change of plans, design or alignment to suit actual field conditions, within the general scope and physical boundaries of the contract.<br>(k) Schedules means the document(s) entitled schedules, completed by the Contractor and submitted with the Tender Submission Letter, as included in the Contract. Such document may include the data, lists and schedules of rates and/or prices.<br>(l) Contract Agreement means the Agreement entered into between the Procuring Entity and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;<br>(m) Contract Documents means the documents listed in GCC Clause 7.1, including any amendments thereto.<br>(n) Contract Price means the price stated in the Notification of Award and thereafter as adjusted in accordance with the provisions of the Contract and further clearly stated under GCC Clause 60;<br>(o) Operational Acceptance means the acceptance by the Procuring Entity of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of contract<br>(p) Site Investigation Reports are those that were included in the Tender Document and are factual and interpretative reports about the surface and subsurface conditions at the Site.<br>(q) Pre-Commissioning means the testing, checking and other requirements specified in the Procuring Entity's Requirements that are to be carried out by the Contractor in preparation for Commissioning;<br>(r) Commissioning means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor for the purpose of carrying out Guarantee Test(s).<br>(s) Guarantee Test(s)means the test(s) specified in the Procuring Entity's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, in accordance with the provisions of GCC Sub-Clause 43.2 (Guarantee Test) hereof.<br>(t) Installation Services means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.<br>(u) Cost means all expenditures reasonably incurred or to be incurred by the Contractor, whether on or off the point of delivery, including overhead, taxes, duties, fees and such other similar levies including corresponding incidental charges and premiums for banking and insurances, as applicable;<br>(v) Day means calendar day unless otherwise specified as working days.<br>(w) Dayworks means work carried out following the instructions of the Procuring Entity or the authorised Project Manager and is paid for on the basis of time spent by the Contractor's workers and equipment at the rates specified in the Schedules, in addition to payments for associated Materials and Plant.<br>(x) Defect is any part of the Works not completed in accordance with the Contract ;<br>(y) Defect Liability Period means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in contract document.<br>(z) Defects Correction Certificate is the certificate issued by the Project Manager upon correction of defects by the Contractor<br>(aa) Force Majeure means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origins not due to negligence or lack of care on the part of the Contractor; such events may include, but not be limited to, acts of the Government in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes or more as included in GCC Clause 56;<br>(bb) GCC means the General Conditions of Contract.<br>(cc) Government means the Government of the People's Republic of Bangladesh.<br>(dd) Goods means raw materials, products and equipment and objects in solid, liquid or gaseous form, electricity, and related Services if the value of such Services does not exceed that of the Goods themselves. It also means mean the Contractor's Plant, Equipment, Materials or any of them as appropriate;<br>(ee) Works means all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance or renovation of railways, roads, highways, or a building, an infrastructure or structure or an installation or any construction work relating to excavation, installation of equipment and materials, decoration, as well as physical services ancillary to works, if the value of those services does not exceed that of the Works themselves.<br>(ff) Plant means permanent plant, equipment, machinery, apparatus, materials, articles, ancillary buildings/structure and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor), but does not include Contractor's Equipment;<br>(gg) Equipment means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.<br>(hh) Facilities means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract. It also includes any ancillary building or infra structure that needs to be constructed/built/erected to support the plant.<br>(ii) Specification means the Specification of the goods/works/related services included in the Contract and any modifications or additions to the specifications made or approved by the Project Manager in accordance with the Contract.<br>(jj) Materials means things of all kinds other than Plant intended to form or forming part of the Permanent Works, including the supply-only materials, if any, to be supplied by the Contractor under the Contract<br>(kk) "Head of the Procuring Entity" means the Secretary of a Ministry or a Division, the Head of a Government Department or Directorate; or the Chief Executive, or as applicable, Divisional Commissioner, Deputy Commissioner, District Judge; or by whatever designation called, of a local Government agency, an autonomous or semi-autonomous body or a corporation, or a corporate body established under the Companies Act; |
| | (ll) Procuring Entity/Employer/Purchaser means an Entity having administrative and financial powers to undertake Procurement of Goods, Works or Services using public funds, as specified in the PCC; |
| | (mm) Project Manager is the person named in the PCC or any other competent person appointed by the Procuring Entity and notified to the Contractor who is responsible for supervising the execution and completion of the plant and services and administering the Contract |
| | (nn) PCC means the Particular Conditions of Contract;<br>(oo) Approving Authority means the authority which, in accordance with the Delegation of Financial powers, approves the award of Contract for the Procurement of Goods, Works and Services ;<br>(pp) Subcontractor means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Contractor; |
| | (qq) Contractor/supplier means the Person under contract with the Procuring Entity for the supply and installation of Plant & Equipment under the Rules and the Act as stated in the PCC. |
| | (rr) Contractor's Representative means any person nominated by the Contractor and approved by the Procuring Entity to perform the duties delegated by the Contractor.<br>(ss) Drawings include calculations and other information provided in Section 8 or as approved by the Project Manager for the execution and completion of the Contract ; |
| | (tt) Site means the point(s) of delivery named in the PCC. |
| | (uu) Writing means communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail. |
| 2. Interpretation | 2.1 In interpreting the GCC, singular also means plural, male also means female or neuter, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract. Words have their normal meaning under the language of the Contract unless specifically defined.<br>2.2 Entire Agreement:<br>The Contract constitutes the entire agreement between the Procuring Entity and the Contractor and supersedes all communications, negotiations and agreements (whether written or verbal) of parties with respect thereto made prior to the date of Contract Agreement; except those stated under GCC Sub Clause 7.1(k).<br>2.3 Amendment:<br>No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.<br>2.4 Non-waiver:<br>(a) Subject to GCC Sub Clause 2.4(b), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.<br>(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.<br>2.5 Severability:<br>If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract. |
| | 2.6 Sectional completion:<br>If sectional completion is specified in the PCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works). |
| 3. Communications & Notices | 3.1 Communications between Parties (notice, request or consent required or permitted to be given or made by one party to the other) pursuant to the Contract shall be in writing to the addresses specified in the PCC. |
| | 3.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.<br>3.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address. |
| 4. Governing Law | 4.1 The Contract shall be governed by and interpreted in accordance with the laws of the People's Republic of Bangladesh. |
| 5. Governing Language | 5.1 The Contract shall be written in English. All correspondences and documents relating to the Contract may be written in English or Bangla. Supporting documents and printed literature that are part of the Contract may be in another language, provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Contract, such translation shall govern.<br>5.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation. |
| 6. Corrupt, Fraudulent, Collusive, Coercive or Obstructive Practices | 6.1 The Government, and the Development Partner, if applicable, requires that the Procuring Entity as well as the Tenderers and Contractors (including sub-contractors, agents, personnel, consultants, and service providers) shall observe the highest standard of ethics during implementation of procurement proceedings and the execution of Contracts under public funds.<br>6.2 For the purpose of GCC Sub Clause 6.2 the terms set forth below as follows–<br>(a) "Corrupt practice" means offering or promising to offer, directly or indirectly, any bribe, employment, valuable item or service, or financial benefit to any officer or employee of the Procuring Entity or of any other public or private authority, with the intent to influence any act, decision, or procedure of the Procuring Entity in the course of the procurement process or contract execution, or the acceptance or solicitation of such by any officer or employee of the Procuring Entity. It shall also include any involvement of the Procuring Entity or any of its employees in corrupt, fraudulent, collusive, coercive, or obstructive practices as mentioned in this Rule;<br>(b) "Fraudulent practice" means any act of providing false statements, dishonestly concealing information, or omitting or misrepresenting or distorting facts by any person to influence a decision in the procurement process or contract execution;<br>(c) "Collusive practice" means a scheme or arrangement between two (2) or more Persons, knowingly or unknowingly involving the Procuring Entity or any of its employees, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, non-competitive levels, thereby denying the Procuring Entity the benefits of competitive price arising from genuine and open competition;<br><br>(d) "Coercive practice" means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in a Procurement proceeding or the execution of a Contract, and this will include creating obstructions in the normal submission process used for Tenders<br>(e) "Obstructive practice" means deliberately destroying, falsifying, altering, or concealing evidence related to a procurement-related investigation, or providing false statements to an investigator so as to impede the investigation of allegations of corrupt, fraudulent, collusive, coercive, or obstructive practices; or intimidating, harassing, or threatening an investigator so as to discourage the disclosure of information or prevent the investigator from carrying out their duties, or directly or indirectly obstructing any action undertaken by the Bangladesh Public Procurement Authority (BPPA) in discharging its responsibilities assigned under the Bangladesh Public Procurement Authority Act, 2023.<br>6.3 Should any corrupt, fraudulent, collusive, coercive or obstructive practice of any kind, in competing for or in executing the Contract, is determined by the Procuring Entity, then the Procuring Entity may, upon giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and the provisions of Clause 73 shall apply as if such expulsion had been made under Sub-Clause 73.1 (Termination for Default).<br>6.4 If corrupt, fraudulent, collusive, coercive or obstructive practice of any kind, determined by the Procuring Entity or the Development Partner (if applicable) against the Contractor alleged to have carried out such practices, the Procuring Entity and/or the Development Partner shall;<br>(a) exclude the Contractor from further participation in the particular Procurement proceeding; or<br>(b) declare, at its discretion, the Contractor to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time.<br>6.5 The Contractor shall be aware of the provisions on corruption, fraudulence, collusion, coercion and of the Public Procurement Act, 2006, the Public Procurement Rules, 2025 and in case of Development Partner financed contract, the Procurement Guidelines of the Development Partner.<br>6.6 The Contractor (including its manufacturers, sub-contractors, agents, personnel, consultants and service providers) shall permit the Government and/or the Development Partner to inspect the Contractor's accounts and records and other documents relating to the submission of Tender and contract performance, and to have them audited by auditors appointed by the Government and/or the Development Partner, if so required. |
| 7. Documents Forming the Contract and Priority of Documents | 7.1 The following documents forming the Contract shall be in the following order of precedence, namely:<br>(a) The signed Contract Agreement;<br>(b) The Notification of Award;<br>(c) The Completed Tender and the Appendix to the Tender;<br>(d) Particular Conditions of Contract;<br>(e) General Conditions of Contract;<br>(f) Technical Specifications;<br>(g) Personnel Information;<br>(h) Equipment Information;<br>(i) Drawings;<br>(j) Priced Schedule for Plant and Services (e-PG5A-3) and Schedule of Requirements and;<br>(k) Other Documents including correspondences listed in the PCC forming part of the Contract. |
| | 7.1 The following documents forming the Contract shall be in the following order of precedence, namely:<br>(k) Other Documents including correspondences listed in the PCC forming part of the Contract. |
| 8. Assignment | 8.1 The Contractor shall not assign his rights or obligations under the Contract, in whole or in part, except with the Procuring Entity's prior written consent. |
| 9. Eligibility | 9.1 The Supplier/Contractor and its Subcontractor(s) shall have the nationality of a country other than that specified in the PCC. |
| | 9.2 All Goods and related services to be supplied under the Contract shall have their origin in the countries except any specified in the PCC. |
| 10. Gratuities / Agency fees | 10.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Tender or in the Contract, have been given or received in connection with the procurement process or in the Contract execution. |
| 11. Confidential Details | 11.1 The Procuring Entity and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 11.<br>11.2 The Procuring Entity shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the Contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the design, construction, or other work and services required for the performance of the Contract.<br>11.3 The obligations of a party under GCC Sub Clauses 11.1 and 11.2 above, however, shall not apply to information that: the Procuring Entity or Contractor needs to share with institutions participating in the financing of the Contract; now or hereafter enters the public domain through no fault of that party; can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.<br>11.4 The above provisions of GCC Clause 11 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works or any part thereof.<br>11.5 Any document, other than this Contract itself, enumerated in GCC Clause 12.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Contractor's performance under this Contract if so required by the Procuring Entity.<br>11.6 The provisions of GCC Clause 11 shall survive completion or termination, for whatever reason |
| 12. Trademark, Patent and Intellectual Property Rights | 12.1 The Procuring Entity should not be liable for any infringement of intellectual property rights arising from use of the goods procured. In case there are third-party claims of such infringement of patent, trademark, or industrial design rights, the Contractor must indemnify and hold the Procuring Entity free and harmless against such claims and shall not be in contravention of Trademark Act, 2009 and Patent and Design Act, 1911. |
| 13. Copyright | 13.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Procuring Entity directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. |
| 14. License/ Use of Technical Information | 14.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Procuring Entity under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Procuring Entity a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Procuring Entity under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Procuring Entity. |
| 15. Joint Venture (JV) | 15.1 If the Contractor is a JV,<br>(a) each partner of the JV shall be jointly and severally liable for all liabilities and ethical or legal obligations to the Procuring Entity for performance of the Contract;<br>(b) the JV partners shall nominate the Leading Partner as Representative or Partner-in-charge being entrusted with the Contract administration and management at Site who shall have the authority to conduct all business including the receipt of payments for and on behalf of all partners of the JV;<br>(c) If there is a dispute that results in legal action being taken in court then action will be taken against all partners of the JV, if they are available and, if only one partner is available, then that partner alone shall answer on behalf of all partners and, if the complaint lodged is proven, the penalty shall be applicable on that partner alone as whatever penalty all the partners would have received; provided that if the other partners of the JV subsequently become available before the legal action has been completed, the Procuring Entity shall have the right to take action against those other partners of that JV as well.<br>(d) the composition or constitution and legal status of the JV shall not be altered without the prior approval of the Procuring Entity;<br>(e) alteration of partners, except the Leading partner, shall only be allowed if any of them is found to be incompetent or has any serious difficulties which may impact the overall implementation of the Works, whereby the incoming partner shall require to possess qualifications higher than that of the outgoing partner;<br>(f) The business share of the Leading Partner shall be the highest among all the partners. Other partner(s) shall have at least 25% of business share each. |
| 16. Nominated Subcontractor | 16.1 Nominated Subcontractor named in the Contract shall be entitled to execute the specific components of the Works stated in the PCC. |
| | 16.2 The Contractor shall not be under obligations to employ a Nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars while there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength, or does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, or does not accept to enter into a subcontract which specifies that, for the subcontracted work including design, if any, the Nominated Subcontractor shall undertake to the Contractor such obligations and liabilities as will enable the contractor to discharge his or her liabilities under the Contract. |
| 17. Other Contractors | 17.1 The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, the Engineer and the Procuring Entity between the dates given in the Schedule of other Contractors. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of other Contractors, and shall notify the Contractor of any such modification. |
| 18. Possession of the Site | 18.1 The Procuring Entity shall give possession of the Site or part(s) of the Site, to the Contractor on the date(s) stated in the PCC. If possession of a part of the Site is not given by the date stated in the PCC, the Procuring Entity will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event. |
| 19. Access to the Site | 19.1 The Contractor shall allow the Engineer and any person authorised by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out. |
| 20. Safety, Security and Protection of the Environment | 20.1 The Contractor shall throughout the execution and completion of the Works and the remedying of any defects therein:<br>(a) take all reasonable steps to safeguard the health and safety of all workers working on the Site and other persons entitled to be on it, and to keep the Site in an orderly state;<br>(b) provide and maintain at the Contractor's own cost all lights, guards, fencing, warning signs and watching for the protection of the Works or for the safety on-site; and<br>(c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of the Contractors methods of operation. |
| 21. Working Hours | 21.1 The Contractor shall not perform any work on the Site on the weekly holidays, or during the night or outside the normal working hours, or on any religious or public holiday, without the prior written approval of the Project Manager. |
| 22. Welfare of Laborers | 22.1 The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's personnel relating to their employment, health, safety, welfare, immigration and shall allow them all their legal rights.<br>22.2 The Contractor, in particular, shall provide proper accommodation to his or her labourers and arrange proper water supply, conservancy and sanitation arrangements at the site for all necessary hygienic requirements and for the prevention of epidemics in accordance with relevant regulations, rules and orders of the government.<br>22.3 The Contractor, further in particular, shall pay reasonable wages to his or her labourers, and pay them in time. In the event of delay in payment the Procuring Entity may effect payments to the labourers and recover the cost from the Contractor.<br>22.4 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take appropriate protective measures to prevent accidents that could result in injury. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority. |
| 23. Subcontractor | 23.1 Subcontracting the whole of the Plant and Service by the Contractor shall not be permissible. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his or her agents or employees, as if they were the acts or defaults of the Contractor.<br>23.2 Any subcontracting arrangements made during contract implementation and not disclosed at the time of the Tendering shall not be allowed.<br>23.3 Subcontracting of any portion of the works shall not relieve the Contractor from any liability or obligations that may arise from its performance.<br>23.4 Contractor shall retain full responsibility for the contract and cannot pass any contractual obligations to the Subcontractor and under no circumstances assignment of the contract to the Subcontractor be allowed.<br>23.5 The Contractor shall not be required to obtain consent from the Project Manager or his representative, for suppliers solely of Materials or to a subcontract for which the Specialist Subcontractor(s) is already named in the Contract.<br>23.6 The prior consent, in writing, of the Engineer shall however be obtained for other proposed Subcontractor(s).<br>23.7 Subcontractors shall comply with the provisions of GCC Clause 6 and 11. |
| 24. Dayworks | 24.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.<br>24.2 All works to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be certified and signed by the Project Manager within seven (7) days of the works being done.<br>24.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms. |
| 25. Child Labor | 25.1 The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development in compliance with the applicable laws and other relevant treaties ratified by the government. |
| 26. Fossils & antiquities | 26.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Procuring Entity. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.<br>26.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Project Manager, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs cost from complying with the instructions, the Contractor shall give a further notice to the Project Manager and shall be entitled subject to Claims under GCC Clause 81. |



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| B. Subject Matter of Contract | |
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| 27. Scope of Facilities | 27.1 Unless otherwise expressly limited in the Procuring Entity's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre Commissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Section, Procuring Entity's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Procuring Entity, as set forth in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Procuring Entity<br>27.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract |
| | 27.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the PCC and the provisions, if any, specified in the PCC. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Procuring Entity and the Contractor, and the price of such spare parts shall be that given in Price Schedule No.1 & 2 under form e-PG5A-3, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts. |
| 28. Time for Commencement | 28.1 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the PCC or within such extended time to which the Contractor shall be entitled under GCC Clause 70.2 hereof |
| 29. Time for Completion | 29.1 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the PCC or within such extended time to which the Contractor shall be entitled under GCC Clause 70.2 hereof. |
| 30. Procuring Entityâ??s Responsibilities | 30.1 Whenever the performance of the obligations in this Contract requires that the Contractor obtain permits, approvals and other license from local public authorities, the Procuring Entity may, if so needed by the Contractor, make its best effort to assist the Contractor in complying with such requirements in a timely and expeditious manner. However, the Contractor shall bear the costs of such permits and/or licenses.<br>30..2 The Procuring Entity shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Procuring Entity. The Procuring Entity shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.<br>30.3 The Procuring Entity shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Procuring Entity to obtain in the Procuring Entity's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Procuring Entity of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Procuring Entity).<br>30.4 If requested by the Contractor, the Procuring Entity shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain<br>30.5 Unless otherwise specified in the Contract or agreed upon by the Procuring Entity and the Contractor, the Procuring Entity shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre Commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Contract Agreement titled Scope of Works and Supply by the Procuring Entity, at or before the time specified in the program furnished by the Contractor under the provisions of contract specified or as otherwise agreed upon by the Procuring Entity and the Contractor.<br>30.6 The Procuring Entity shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 42.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 43.2.<br>30.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 30 shall be the responsibility of the Procuring Entity, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 43.2.<br>30.8 In the event that the Procuring Entity shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall be determined by the Project Manager and added to the Contract Price |
| 31. Contractorâ??s Responsibilities | 31.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.<br>31.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Procuring Entity, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to tender submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities<br>31.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Procuring Entity under GCC Sub-Clause 30.3 hereof and that are necessary for the performance of the Contract. |
| 32. Procuring Entityâ??s and Contractorâ??s Risk | 32.1 The Procuring Entity carries the risks that the Contract states are Procuring Entity's risks and the Contractor carries the risks that the Contract states are Contractor's risks |
| 33. Procuring Entityâ??s Risks | 33.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Procuring Entity's risks:<br>(a) the risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to<br>i. use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or<br>ii. negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or Contracted to him except the Contractor.<br>iii. the risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.<br>33.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is Procuring Entity's risk, except loss or damage due to:<br>(a) a Defect which existed on the Completion Date;<br>(b) an event occurring before the Completion Date, which was not itself Procuring Entity's risk; or<br>(c) the activities of the Contractor on the Site after the Completion Date. |
| 34. Contractorâ??s Risks | 34.1 From the Start Date until the Defects Correction Certificate has been issued the risks of personal injury, death, and loss of or damage to property including without limitation, the Works, Plant, Materials, and Equipment, which are not Procuring Entity's risks are Contractor's risks. |



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| C. Execution of the Facilities | |
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| 35. Representatives: Project Manager | 35.1 If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Procuring Entity shall appoint and notify the Contractor in writing of the name of the Project Manager. The Procuring Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Procuring Entity at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.<br>35.2 All notices, instructions, information and other communications given by the Contractor to the Procuring Entity under the Contract shall be given to the Project Manager, except as herein otherwise provided. |
| 36. Representatives: Contractorâ??s Representative & Construction Manager | 36.1 1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Procuring Entity in writing to approve the person so appointed. If the Procuring Entity makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Procuring Entity objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 39.2.1 shall apply thereto.<br>36.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.<br>The Contractor shall not revoke the appointment of the Contractor's Representative without the Procuring Entity's prior written consent, which shall not be unreasonably withheld. If the Procuring Entity consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 39.2.1.<br>36.3 The Contractor's Representative may, subject to the approval of the Procuring Entity which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Procuring Entity and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 39.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.<br>36.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy.<br>36.5 The Procuring Entity may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Procuring Entity, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 40.4. The Procuring Entity shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.<br>36.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 36.5, the Contractor shall, where required, promptly appoint a replacement. |
| 37. Work Program | 37.1 Contractor's Organization<br>The Contractor shall supply to the Procuring Entity and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Procuring Entity and the Project Manager in writing of any revision or alteration of such an organization chart.<br>37.2 Program of Performance<br>Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and Pre Commission the Facilities, as well as the date by which the Contractor reasonably requires that the Procuring Entity shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Contract Agreement titled Time Schedule, and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion pursuant to Sub-Clause 29.1 and any extension granted in accordance with GCC Clause 70.2, and shall submit all such revisions to the Project Manager.<br>37.3 Progress Report<br>The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 31.2 above, and supply a progress report to the Project Manager every month.<br>The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.<br>37.4 Progress of Performance<br>If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 37.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Procuring Entity or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 29.1, any extension thereof entitled under GCC Sub-Clause 70.1, or any extended period as may otherwise be agreed upon between the Procuring Entity and the Contractor.<br>37.5 Procedures<br>The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Procuring Entity's Requirements. The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract. |
| 38. Design and Engineering | 38.1 Specifications and Drawings<br>(a) The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice. The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Procuring Entity.<br>(b) The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Project Manager.<br>38.2 Codes and Standards<br>Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Procuring Entity and shall be treated in accordance with GCC Clause 69.<br>38.3<br><br>Approval/Review of Technical Documents by Project Manager<br>38.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 37.2 (Program of Performance).<br>Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.<br>GCC Sub-Clauses 38.3.2 through 38.3.6 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only<br>38.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 38.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.<br>38.3.3. The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.<br>38.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 38.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.<br>38.3.5 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.<br>38.3.6 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 38.3. If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 70 shall apply to such request. |
| 39. Procurement | 39.1 Plant<br>Subject to GCC Sub-Clause 65.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.<br>39.2 Procuring Entity-Supplied Plant<br>If the Appendix to the Contract Agreement titled Scope of Works and Supply by the Procuring Entity, provides that the Procuring Entity shall furnish any specific items to the Contractor, the following provisions shall apply:<br>i. The Procuring Entity shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 37.2, unless otherwise mutually agreed.<br>ii. Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Procuring Entity shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Procuring Entity, remedy such shortage, defect or default at the Procuring Entity's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 39.2.ii. shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.<br>iii. The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Procuring Entity of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 45 or under any other provision of Contract.<br>39.3 Transportation<br>i. The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.<br>ii. Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.<br>iii. Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Procuring Entity by telex, cable, facsimile or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Procuring Entity with relevant shipping documents to be agreed upon between the Parties.<br>iv. The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Procuring Entity shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Procuring Entity from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.<br>39.4 Customs Clearance<br>The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Procuring Entity's obligations under GCC Sub-Clause 65.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Procuring Entity, the Procuring Entity shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 70. |
| 40. Installation | 40.1 Setting Out/Supervision<br>i. Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Procuring Entity.<br>If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Procuring Entity, the expense of rectifying the same shall be borne by the Procuring Entity.<br>ii. Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.<br>40.2 Labor:<br>40.2.1 Engagement of Staff and Labor<br>(a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.<br>(b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.<br>(c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Procuring Entity will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.<br>(d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Procuring Entity may provide the same to such personnel and recover the cost of doing so from the Contractor.<br>40.2.2 Persons in the Service of Procuring Entity<br>The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Procuring Entity's Personnel.<br>40.2.3 Facilities for Staff and Labor<br>Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Procuring Entity's Personnel as stated in the Specification.<br>The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.<br>40.3 Contractor's Equipment<br>40.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.<br>40.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.<br>40.3.3 The Procuring Entity will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.<br>40.4 Site Regulations and Safety<br>The Procuring Entity and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Procuring Entity, with a copy to the Project Manager, proposed Site regulations for the Procuring Entity's approval, which approval shall not be unreasonably withheld.<br>Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention. reasonable costs incurred by the Procuring Entity in connection therewith shall be paid by the Contractor to the Procuring Entity. Otherwise, the cost of such remedial work shall be borne by the Procuring Entity.<br>40.5 Site Clearance<br>Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.<br>40.6 Opportunities for Other Contractors<br>40.6.1 The Contractor shall, upon written request from the Procuring Entity or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Procuring Entity on or near the Site.<br>40.6.2 If the Contractor, upon written request from the Procuring Entity or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Procuring Entity shall fully compensate t41. he Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.<br>40.7 Emergency Work<br>40.7.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.<br>If the Contractor is unable or unwilling to do such work immediately, the Procuring Entity may do or cause such work to be done as the Procuring Entity may determine is necessary in order to prevent damage to the Facilities. In such event the Procuring Entity shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Procuring Entity is work that the Contractor was liable to do at its own expense under the Contract.<br>40.7.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.<br>40.8 Watching and Lighting<br>The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public. |
| 41. Test & Inspection | 41.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.<br>41.2 The Procuring Entity and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Procuring Entity shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.<br>41.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Procuring Entity and the Project Manager or their designated representatives to attend the test and/or inspection.<br>41.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection. If the Procuring Entity or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.<br>41.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.<br>41.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 41.3.<br>41.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to an 82.3.<br>41.8 The Contractor shall afford the Procuring Entity and the Project Manager, at the Procuring Entity's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.<br>41.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Procuring Entity or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 41.4, shall release the Contractor from any other responsibilities under the Contract.<br>41.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.<br>41.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.<br>41.12 If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 41.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Procuring Entity, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract. |
| 42. Completion of the Facilities | 42.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Procuring Entity's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Procuring Entity in writing.<br>42.2 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 42.1, the Procuring Entity shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Procuring Entity for Pre-Commissioning of the Facilities or any part thereof.<br>Pursuant to the Appendix to the Contract Agreement titled Scope of Works and Supply by the Procuring Entity, the Procuring Entity shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-Commissioning of the Facilities or any part thereof.<br>42.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Procuring Entity and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Procuring Entity in accordance with GCC Sub-Clause 42.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 43.5.<br>42.4 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 39.4, either issue a Completion Certificate in the form specified in the Procuring Entity's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice, or notify the Contractor in writing of any defects and/or deficiencies.<br>If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure.<br>42.5 If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.<br>42.6 If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.<br>42.7 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 42.4, or if the Procuring Entity makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Procuring Entity's use of the Facilities, as the case may be.<br>42.8 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Procuring Entity will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.<br>42.9 Upon Completion, the Procuring Entity shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof. |
| 43. Commissioning and Operational Acceptance | 43.1 Commissioning<br>43.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 42.4, or immediately after the date of the deemed Completion, under GCC Sub-Clause 42.5.<br>43.1.2 The Procuring Entity shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.<br>43.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Procuring Entity. |
| | 43.2 Guarantee Test<br>43.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the PCC or any other period agreed upon by the Procuring Entity and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 46.2 and 46.3 shall not apply. |
| | 43.3 Operational Acceptance<br>43.3.1 The Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Procuring Entity's Requirements (Forms and Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.<br>43.3.2 The Project Manager shall, after consultation with the Procuring Entity, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.<br>43.3.3 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.<br>43.4 Partial Acceptance<br>43.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.<br>43.4 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.<br>43.5 Delayed Pre-commissioning and/or Guarantee Test<br>43.5.1 In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities pursuant to Sub-Clause 42.3, or with the Guarantee Test pursuant to Sub-Clause 43.2, for reasons attributable to the Procuring Entity either on account of non-availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Contractor's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Sub-Clause 42.6, and Operational Acceptance, pursuant to GCC Sub-Clause 43.3.3, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 45.2, Functional Guarantee, pursuant to GCC Clause 46, and Care of Facilities, pursuant to GCC Clause 50, and GCC Clause 71.1, Suspension, shall not apply. In this case, the following provisions shall apply.<br>43.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to clauses 62, 63 & 64, the Contractor shall be entitled to the following:<br>(a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 44.2;<br>(b) payments due to the Contractor in accordance with the provision specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Procuring Entity, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 43.5.3 below;<br>(c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Procuring Entity;<br>(d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 50.1 shall be reimbursed to the Contractor by the Procuring Entity for the period between the notification mentioned above and the notification mentioned in Sub-Clause 43.5.4 below. The provision of GCC Sub-Clause 49.2 shall apply to the Facilities during the same period.<br>43.5.3 In the event that the period of suspension under above Sub-Clause 43.5.1 actually exceeds one hundred eighty (180) days, the Procuring Entity and Contractor shall mutually agree to any additional compensation payable to the Contractor.<br>43.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing Pre-commissioning, in accordance with Clause 42. |



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| D. Guarantees and Liabilities | |
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| 44. Completion Time Guarantee | 44.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion pursuant to GCC Sub-Clause 29.1, or within such extended time to which the Contractor shall be entitled under GCC Clause 70 hereof.<br>44.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 70, the Contractor shall pay to the Procuring Entity liquidated damages stated under GCC Clause 68 as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the PCC as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Procuring Entity may consider termination of the Contract, pursuant to GCC Sub-Clause 73.1.<br>Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 70. The Contractor shall have no further liability whatsoever to the Procuring Entity in respect thereof.<br>However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.<br>Save for liquidated damages payable under this GCC Sub-Clause 44.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GCC Sub-Clause 37.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Procuring Entity. |
| | 44.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 70, the Procuring Entity shall pay to the Contractor a bonus in the amount specified in the PCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the PCC. |
| 45. Defect Liability | 45.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed. |
| | 45.2 The Defect Liability Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the PCC pursuant to GCC Sub-Clause 45.10.<br>If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:<br>(a) improper operation or maintenance of the Facilities by the Procuring Entity;<br>(b) operation of the Facilities outside specifications provided in the Contract; or<br>(c) Normal wear and tear. |
| | 45.3 The Contractor's obligations under this GCC Clause 45 shall not apply to:<br>(a) any materials that are supplied by the Procuring Entity under GCC Sub-Clause 39.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;<br>(b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Procuring Entity or any matters for which the Contractor has disclaimed responsibility herein; or<br>(c) Any other materials supplied or any other work executed by or on behalf of the Procuring Entity, except for the work executed by the Procuring Entity under GCC Sub-Clause 45.7. |
| | 45.4 The Procuring Entity shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Contractor to inspect any such defect.<br>45.5 The Procuring Entity shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 45.<br>The Contractor may, with the consent of the Procuring Entity, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.<br>45.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Procuring Entity may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.<br>If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Procuring Entity and the Contractor.<br>45.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Procuring Entity may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Procuring Entity in connection therewith shall be paid to the Procuring Entity by the Contractor or may be deducted by the Procuring Entity from any monies due the Contractor or claimed under the Performance Security.<br>45.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Procuring Entity because of any of the aforesaid reasons.<br>45.9 Except as provided in GCC Clauses 45 and 52, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or willful action of the Contractor. |
| | 45.10 In addition, any such component of the Facilities, and during the period of time as may be specified in the PCC, shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GCC Sub-Clause 45.2. |
| 46. Functional Guarantees | 46.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.<br>46.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Procuring Entity upon completion of the necessary changes, modifications and/or additions, and shall request the Procuring Entity to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Procuring Entity may consider termination of the Contract, pursuant to GCC Sub-Clause 69.2.2.<br>46.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either<br>(a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Procuring Entity to repeat the Guarantee Test or<br>(b) pay liquidated damages to the Procuring Entity in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Contract Agreement titled Functional Guarantees.<br>46.4 The payment of liquidated damages under GCC Sub-Clause 46.3, up to the limitation of liability specified in the Appendix to the Contract Agreement titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 46.3, and the Contractor shall have no further liability whatsoever to the Procuring Entity in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid. |
| 47. Patent Indemnity | 47.1 The Contractor shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 47.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.<br>Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.<br>47.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 34.1, the Procuring Entity shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.<br>If the Contractor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Procuring Entity within the twenty-eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.<br>The Procuring Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.<br>47.3 The Procuring Entity shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity. |
| 48. Limitation of Liability | 48.1 Except in cases of criminal negligence or willful misconduct,<br>(a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and |
| | 48.1 Except in cases of criminal negligence or willful misconduct,<br>(b) the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PCC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Procuring Entity with respect to patent infringement.. |



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| E. Risk Distribution | |
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| 49. Transfer of Ownership | 49.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Procuring Entity upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.<br>49.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Procuring Entity when the Plant are brought on to the Site.<br>49.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.<br>49.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Procuring Entity and the Contractor agree that the Plant in question are no longer required for the Facilities.<br>49.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 50 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated. |
| 50. Care of Facilities | 50.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 42 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 45. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 50.2.<br>50.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of<br>(a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 17 hereof; or<br>(b) any use or occupation by the Procuring Entity or any third Party other than a Subcontractor, authorized by the Procuring Entity of any part of the Facilities; or<br>(c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Procuring Entity, or any such matter for which the Contractor has disclaimed responsibility herein,<br>50.3 the Procuring Entity shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Procuring Entity requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Procuring Entity in accordance with GCC Clause 64. If the Procuring Entity does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Procuring Entity shall either request a change in accordance with GCC Clause 69, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Procuring Entity shall terminate the Contract pursuant to GCC Sub-Clause 71.1 hereof.<br>50.4 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 45.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 50.2 (b) and (c). |
| 51. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification | 51.1 Subject to GCC Sub-Clause 51.3, the Contractor shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Procuring Entity, its contractors, employees, officers or agents.<br>51.2 If any proceedings are brought or any claim is made against the Procuring Entity that might subject the Contractor to liability under GCC Sub-Clause 51.1, the Procuring Entity shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Procuring Entity's, name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.<br>51.3 If the Contractor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Procuring Entity within the twenty-eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.<br>The Procuring Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.<br>51.4 The Procuring Entity shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Procuring Entity, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 52, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.<br>51.5 The Party entitled to the benefit of an indemnity under this GCC Clause 51 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced. |
| 52. Insurance | 52.1 To the extent specified in the Appendix and in PCC to the Contract Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Procuring Entity, who should not unreasonably withhold such approval.<br>(a) Cargo Insurance During Transport<br>Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.<br>(b) Installation All Risks Insurance<br>Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.<br>(c) Third Party Liability Insurance<br>Covering bodily injury or death suffered by third Parties including the Procuring Entity's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.<br>(d) Automobile Liability Insurance<br>Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.<br>(e) Workers' Compensation<br>In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.<br>(f) Procuring Entity's Liability<br>In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.<br>(g) Other Insurances<br>Such other insurances as may be specifically agreed upon by the Parties hereto as listed in the Appendix to the Contract Agreement titled Insurance Requirements. |
| | 52.2 The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 52.1, except for the Third Party Liability, Workers' Compensation and Procuring Entity's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 52.1 except for the Cargo Insurance during Transportation, Workers' Compensation and Procuring Entity's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.<br>52.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Procuring Entity certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Procuring Entity by insurers prior to cancellation or material modification of a policy.<br>52.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.<br>52.5 The Procuring Entity shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Procuring Entity shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Procuring Entity shall provide copies of the policies taken out by the Procuring Entity under this GCC Sub-Clause 52.5.<br>52.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 51.1, the Procuring Entity may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Contractor under the Contract any premium that the Procuring Entity shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Procuring Entity fails to take out and/or maintain in effect the insurances referred to in GCC 49.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Procuring Entity under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Procuring Entity. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Procuring Entity, and the Contractor shall have full recourse against the Procuring Entity for any and all liabilities of the Procuring Entity herein.<br>52.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 52, and all monies payable by any insurers shall be paid to the Contractor. The Procuring Entity shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Procuring Entity's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Procuring Entity. With respect to insurance claims in which the Contractor's interest is involved, the Procuring Entity shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor. |
| 53. Limitation of Liability | 53.1 Except in cases of criminal negligence or wilful misconduct,<br>(a) the Contractor shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Procuring Entity; and<br>(b) the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Procuring Entity with respect to patent infringement. |
| 54. Unforeseen Conditions | 54.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Procuring Entity, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing beforehand:<br>(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;<br>(b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;<br>(c) the extent of the anticipated delay; and<br>(d) the additional cost and expense that the Contractor is likely to incur.)<br>On receiving any notice from the Contractor under this GCC Sub-Clause 54.1, the Project Manager shall promptly consult with the Procuring Entity and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Procuring Entity, of the actions to be taken.<br>54.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 54.1 shall be paid by the Procuring Entity to the Contractor as an addition to the Contract Price.<br>54.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 54.1, the Time for Completion shall be extended in accordance with GCC Clause 65. |
| 55. Adjustment for Changes in Legislation | 55.1 Unless otherwise specified in the Contract, if after the Contract, any law, regulation, ordinance, order or by law having the force of law is enacted, promulgated, abrogated, or changed in Bangladesh (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. |
| 56. Force Majeure | 56.1 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below:<br>(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;<br>(ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;<br>(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;<br>(iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and<br>(v) natural catastrophes such as cyclone, hurricane, typhoon, tsunami, storm surge, floods, earthquake, landslides, fires, epidemics, quarantine restrictions, or volcanic activity;<br>(vi) freight embargoes;<br>(vii) acts of the Government in its sovereign capacity.<br>56.2 The Head of Procuring Entity decides the existence of a Force Majeure that will be the basis of the issuance of order for suspension of Supply as stated under GCC Sub Clause 59.2. |
| 57. Notice of Force Majeure | 57.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice within fourteen (14) days after the party became aware, to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented.<br>57.2 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract. |
| 58. Duty to Minimise Delay | 58.1 Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.<br>58.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure. |
| 59. Consequences of Force Majeure | 59.1 The Contractor shall not be liable for forfeiture of its security, liquidated damages, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure<br>59.2 The Procuring Entity may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to Force Majeure as defined in the Contract.<br>59.3 Delivery shall be made either upon the lifting or the expiration of the suspension order. However, if the Procuring Entity terminates the contract as stated under GCC Clause 59, resumption of delivery cannot be done.<br>59.4 After receiving notice under GCC Sub Clause 57.1, the Procuring Entity shall proceed to determine these matters under the provisions of the Contract. |



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| F. Payment | |
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| 60. Contract Price | 60.1 The Contract Price shall be paid as specified in the Contract Agreement Form e-PG5A- 8. |
| | 60.5 If the value of the Index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next or in the final payment certificate. The Index value shall be deemed to take account of all changes in price due to fluctuations. |
| | 60.2 Unless an adjustment clause is provided for in the PCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract. |
| | 60.3 Subject to GCC Sub-Clauses 30.2, 31.1 and 54 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract. |
| | 60.4 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts as certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amount. The generic formula indicated below in the form as specified in the PCC applies:<br>P= A + B (Im/Io)<br>where:<br>P is the adjustment factor<br>A and B are Coefficients specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract; and<br>Im is the Index during the month the work has been executed and Io is the Index prevailing twenty-eight (28) days prior to the deadline for submission of Tender.<br>The Indexes to be used is as published by the Bangladesh Bureau of Statistics (BBS) on a monthly basis. In case not available, then other countries or authorities of the sources mentioned in Appendix to the Tender may be used. |
| | 60.5 If the value of the Index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next or in the final payment certificate. The Index value shall be deemed to take account of all changes in price due to fluctuations. |
| 61. Terms of Payment | 61.1 The Contract Price, including any Advance Payments specified in PCC, if applicable, shall be paid in the manner as specified in the PCC and in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which also outlines the procedures to be followed in making application for and processing payments. |
| | 61.2 No payment made by the Procuring Entity herein shall be deemed to constitute acceptance by the Procuring Entity of the Facilities or any part(s) thereof.<br>61.3 Payments shall be made promptly by the Procuring Entity after submission of an invoice or request for payment by the Contractor, and after the Procuring Entity has accepted it.<br>61.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendices to the Contract Agreement titled Terms and Procedures of Payment, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's tender. |
| | 61.5 In the event that the Procuring Entity fails to pay the Contractor any payment by its respective due date or within the period as stated under GCC Sub Clause 61.3, the Procuring Entity shall pay to the Contractor interest on the amount of such delayed payment at the rate specified in the PCC, for the period of delay until payment has been made in full. |
| | 61.6 If an amount certified is increased in a subsequent certificate as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. |
| 62. Advance Payment Security | 62.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix to the Contract Agreement titled Terms and Procedures of Payment, and in the same currency or currencies.<br>62.2 The security shall be in the form provided in the tender documents or in another form acceptable to the Procuring Entity. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Procuring Entity. The security shall be returned to the Contractor immediately after its expiration. |
| 63. Performance Security | 63.1 The Procuring Entity shall notify the Contractor of any claim made against the Bank issuing the Performance Security. in the amount specified in the PCC. |
| | 63.2 The Procuring Entity may claim against the security if any of the following events occurs for fourteen (14) days or more.<br>i. The Contractor is in breach of the Contract and the Procuring Entity has duly notified him or her; and<br>ii. The Contractor has not paid an amount due to the Procuring Entity and the Procuring Entity has duly notified him or her.<br>63.3 In the event as stated under GCC Sub Clause 63.2, the Contractor is liable to pay compensation under the Contract amounting to the full value of the Performance Security or more, the Procuring Entity may call the full amount of the security. |
| | 63.4 Unless otherwise specified in the PCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, five hundred and forty (540) days after Completion of the Facilities or three hundred and sixty five (365) days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 45.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 45.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period specified in the PCC pursuant to GCC Sub-Clause 45.10 and up to the amount specified in the PCC. |
| | 63.5 If there is no reason to call the security, the security shall be discharged by the Procuring Entity and returned to the Contractor not later than seven (7) days following the date of making the final payment to the Contractor under the Contract and subject to the issuance of the Acceptance Certificate by the Procuring Entity. |
| 64. Retention Money | 64.1 The Procuring Entity shall retain an amount from the payable amount due to the Contractor at the percentage specified in the PCC until successful expiration of the Defect Liability period. |
| | 64.2 The total amount retained under GCC Sub Clause 64.1 shall be kept to meet any claims during the Defect Liability Period and shall be returned after the successful expiration of Defects Liability Period and the Project Manager has certified in the form of Defects Corrections Certificate. |
| 65. Taxes and Duties | 65.1 The Contractor shall be entirely responsible for all kinds of taxes, customs duties, VAT, fees, levies, and such other charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.<br>65.2 Notwithstanding GCC Sub-Clause 65.1 above, the Procuring Entity shall bear and promptly pay<br>(a) all customs and import duties for the Plant specified in Price Schedule No. 1; and<br>(b) other domestic taxes such as, sales tax and value added tax (VAT) on the Plant specified in Price Schedules No. 1 and No. 2 and that is to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.<br>65.3 In the event that the rate of any direct or indirect tax (including, but not limited to, income tax, VAT, customs duties, etc.) is altered by virtue of any law, regulation, order, or other legal instrument, the Contract Price shall, subject to the approval of the Head of the Procuring Entity, be adjusted (either upward or downward) so as to ensure that the net amount payable to the Contractor remains unaffected by such legal changes. |
| 66. Payments to Nominated Subcontractor(s) | 66.1 The Contractor shall pay to the Nominated Subcontractor(s) the amounts shown on the Nominated Subcontractor's invoices approved by the Contractor in accordance with the subcontract included under the Contract. |
| 67. Price Adjustment | 67.1 Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases the tender documents shall include in the Appendix 2, a formula of such price adjustment.<br>67.2 Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract.<br>67.3 If the value of the Index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next or in the final payment certificate. The Index value shall be deemed to take account of all changes in price due to fluctuations. |
| 68. Liquidated Damages | 68.1 Except as provided under GCC Sub Clause 56, if the Contractor fails to complete the Plant and Equipment Works within the Intended Completion Date or extended Intended Completion Date of the contract or Intended Sectional Completion Date or extended sectional completion date of any section under the contract, the Procuring Entity shall, as Liquidated Damages, deduct from the Contract Price, a sum at the percent-rate per day of delay as specified in the PCC, of the contract value of the uncompleted works or part thereof completed after the Intended Completion Date or extended Intended Completion Date, as applicable. The total amount of Liquidated Damages or Delay Damages shall not exceed the amount specified in the PCC. The Procuring Entity may deduct Liquidated Damages from payments due to the Contractor. Payment of Liquidated damages shall not affect the Contractor's liabilities. |



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| G. Change in Contract Elements | |
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| 69. Change in the Facilities | 69.1 Introducing a Change<br>69.1.1 Subject to GCC Sub-Clauses 69.2.5 and 69.2.7, the Procuring Entity shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract<br>69.1.2 The Contractor may from time to time during its performance of the Contract propose to the Procuring Entity with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Procuring Entity may at its discretion approve or reject any Change proposed by the Contractor, provided that the Procuring Entity shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.<br>69.1.3 Notwithstanding GCC Sub-Clauses 64.1.1 and 64.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.<br>69.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 64.2 and 64.3, and further details and forms are provided in the Procuring Entity's Requirements (Forms and Procedures)<br>69.2 Changes Originating from Procuring Entity<br>69.2.1 If the Procuring Entity proposes a Change pursuant to GCC Sub-Clause 69.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:<br>(a) brief description of the Change<br>(b) effect on the Time for Completion<br>(c) estimated cost of the Change<br>(d) effect on Functional Guarantees (if any)<br>(e) effect on the Facilities<br>(f) effect on any other provisions of the Contract.<br>69.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.<br>Upon receipt of the Contractor's Estimate for Change Proposal, the Procuring Entity shall do one of the following:<br>(a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal<br>(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate<br>(c) advise the Contractor that the Procuring Entity does not intend to proceed with the Change.<br>69.2.3 Upon receipt of the Procuring Entity's instruction to proceed under GCC Sub-Clause 69.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 69.2.1.<br>69.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change<br>69.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 69 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Procuring Entity accepts the Contractor's objection, the Procuring Entity shall withdraw the proposed Change and shall notify the Contractor in writing thereof.<br>The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.<br>69.2.6 Upon receipt of the Change Proposal, the Procuring Entity and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Procuring Entity shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.<br>If the Procuring Entity is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.<br>If the Procuring Entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 69.2.2.<br>69.2.7 If the Procuring Entity and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Procuring Entity may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order." Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.<br>69.3 Changes Originating from Contractor<br>69.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 69.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 69.2.1.<br>Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GCC Sub-Clauses 69.2.6 and<br>69.3.2. However, should the Procuring Entity choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal. |
| 70. Extension of Delivery and Completion Schedule | 70.1 The Contractor must deliver the Plant and the services procured within the period prescribed by the Procuring Entity, as specified in the TDS.<br>70.2 The Time(s) for Completion specified in the PCC pursuant to GCC Sub-Clause 29.1 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:<br>(a) any Change in the Facilities as provided in GCC Clause 69<br>(b) any occurrence of Force Majeure as provided in GCC Clause 56, unforeseen conditions as provided in GCC Clause 54, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 50.2<br>(c) any suspension order given by the Procuring Entity under GCC Clause 44 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 71.2 or<br>(d) any changes in laws and regulations as provided in GCC Clause 55 or<br>(e) any default or breach of the Contract by the Procuring Entity, Appendix to the Contract Agreement titled, or any activity, act or omission of the Procuring Entity, or the Project Manager, or any other contractors employed by the Procuring Entity, or<br>(f) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or<br>(g) delays attributable to the Procuring Entity or caused by customs, or<br>(h) any other matter specifically mentioned in the Contract<br>by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.<br>70.3 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Procuring Entity and the Contractor shall agree upon the period of such extension. The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.<br>70.4 In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 65.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 65.1, the amount of such extra costs shall be added to the Contract Price.<br>70.5 Within twenty-one (21) days of receipt of the Contractor's notice, the Procuring Entity shall evaluate the situation and may grant time extensions, if based on justifiable grounds, without liquidated damages.<br>70.6 The Procuring may extend up to thirty percent (30%) of the original contract time. above 30% of the original contract time as mentioned in GCC Sub Clause 70.1.<br>70.7 In the case an extension of the original delivery schedule required under GCC Sub Clause 70.1 is or will be more than thirty (30) percent but not beyond one hundred (100) percent additional to the original Contract time, approval of the Head of the Procuring Entity or an officer authorized by him or her for the same shall be required.<br>70.8 In exceptional cases, where an extension of the original contract time required under GCC Sub Clause 70.1 is or will be more than one hundred (100) percent of the original Contract time, approval of the Secretary of the concerned ministry or division for the same shall be required.<br>70.9 Except in case of Force Majeure, as provided under GCC Clause 56, a delay by the Contractor in the performance of its delivery and completion obligations shall render the Contractor liable to the imposition of Liquidated Damages pursuant to GCC Clause 68, unless an extension of the Delivery and Completion Schedule is agreed upon, pursuant to GCC Clause 70. |
| 71. Suspension | 71.1 The Procuring Entity may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons thereof. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.<br>If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Procuring Entity shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 69, excluding the performance of the suspended obligations from the Contract.<br>If the Procuring Entity fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 69 or, where it affects the whole of the Facilities<br>71.2 If<br>(a) the Procuring Entity has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Procuring Entity that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 61.6, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or<br>(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity, including but not limited to the Procuring Entity's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 30.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,<br>then the Contractor may by fourteen (14) days' notice to the Procuring Entity suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.<br>71.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 71, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 43.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Procuring Entity to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.<br>71.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Procuring Entity. |



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| H. Termination and Settlement of Disputes | |
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| 72. Notice to Correct | 72.1 If the Contractor fails to carry out any obligation under the Contract the Project Manager may, by giving a Notice to the Contractor, require the Contractor to make good the failure and to remedy it within a specified time ('Notice to Correct' in these Conditions).<br>The Notice to Correct shall:<br>(a) describe the Contractor's failure to comply with any contractual obligations;<br>(b) state the Sub-Clause and/or provisions of the Contract under which the Contractor has the obligation; and<br>specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.<br>72.2 After receiving a Notice to correct the Contractor shall immediately respond but not later than 5 (five) days by giving a reply to the Project Manager describing the measures the Contractor will take to remedy the failure, and stating the date on which such measures will be commenced in order to comply with the time specified in the notice to correct. The time specified in the notice to correct shall not imply any extension of the Time for Completion. |
| 73. Termination for Default | 73.1 The Procuring Entity or the Contractor, without prejudice to any other remedy for breach of Contract, by giving fourteen (14) working-days written Notice of Termination mentioning the clause of breach to the other party, may terminate the Contract in whole or in part if the other party causes a fundamental breach of Contract. Fundamental breaches of the Contract shall include, but shall not be limited to, the following:<br>i. the Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Programme or the Contractor stops works repeatedly without any valid ground and the stoppage has not been authorized by the Project Manager.<br>ii. the Contractor fails to commence the work within the Start date;<br>iii. the Contractor does not maintain a Security, which is required;<br>iv. the Contractor fails to comply with instructions of the Notice to Correct as specified in GCC Clause 72;<br>v. the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within eighty-four (84) days;<br>vi. the Procuring Entity fails to handover the full works-site or a substantial portion of the works-site to the Contractor within eighty-four (84) days of contract signing.<br>vii. the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;<br>viii. the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of Liquidated Damages can be paid, as specified in GCC Sub Clause 68;<br>ix. the Contractor has subcontracted the Works exceeding the percentage as mentioned in GCC Sub Clause 23.1 or any subcontractor has been engaged during contract implementation without the prior approval of the Head of Procuring Entity or Authorized Officer as specified in GCC Sub Clause 23.6.<br>x. the Contractor, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent or collusive or coercive or obstructive practices, in case development partner, as defined in GCC Clause 6, in competing for or in executing the Contract.<br>xi. A payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within eighty-four (84) days of the date of the Project Manager's certificate.<br>73.2 If any of the events pointed out under GCC Sub Clause 72.1 or any such event that is not listed in that clause but can be deemed as a fundamental breach of a contract happens, the affected party shall notify (first notice- Notice of Default) the defaulted party of such event and its intention to terminate the contract making reference(s) to the relevant GCC Clauses and ask the defaulted party the reason why the affected party will not terminate the contract with a 21-day timeline from the issuance of the first notice to provide any clarification.<br>73.3 If the Procuring Entity receives a reasonable clarification on the breaching event from the Contractor or the Contractor attempts and accomplishes any remedial action to mitigate the breach event, the Procuring Entity may affirm the contract without limiting its right to terminate the contract for any other fundamental breach by the Contractor.<br>73.4 If the Procuring Entity does not receive any response or receive an unacceptable clarification on the breach event, it may terminate the contract mentioning an immediate effective date through a final notice.<br>73.5 The final notice (Notice of Termination) will be issued by the Procuring Entity getting approval from the Head of the Procuring Entity and the Contractor shall not perform any activity after issuance of that notice.<br>73.6 The Head of the Procuring Entity may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Entity.<br>73.7 In the event the Procuring Entity terminates the Contract in whole or in part, as stated under GCC Clause 73.1, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Plant similar to those not completed or not performed, and the Contractor shall be liable to the Procuring Entity for any additional costs for such similar Goods. However, the Contractor shall continue performance of the Contract to the extent not terminated. |
| 74. Termination for Insolvency | 74.1 The Procuring Entity shall terminate this Contract if the Contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Contractor. |
| 75. Termination for Convenience | 75.1 The Procuring Entity, by giving twenty-one (21) days written notice sent to the Contractor, may terminate this Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring Entity's convenience, the extent to which performance of the Contractor under the contract is terminated, and the date upon which such termination becomes effective.<br>75.2 The Goods that have been delivered and/or performed or are ready for delivery or performance within twenty-one (21) days after the Contractor's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods not yet performed and/or ready for delivery, the Procuring Entity may elect:<br>(a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or<br>(b) to cancel the remainder and pay to the Contractor an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Contractor<br>75.3 The expiration of the Delivery and Completion Schedule, initiation of amicable settlement of disputes, adjudication and arbitral proceedings under the set terms and conditions shall not be deemed a termination of the contract. |
| 76. Payment upon Termination | 76.1 If the Contract is terminated because of a fundamental breach of Contract under GCC Sub Clause 73.1 by the Contractor, the Project Manager shall issue a certificate for the value of the Works done and Plant and Materials ordered less advance payments received up to the date of the issue of the certificate and less the amount from percentage to apply to the contract value of the works not completed. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.<br>76.2 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a payment certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's foreign personnel employed solely on the Works and recruited specifically for the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.<br>76.3 If the Contract is terminated for reasons of Force Majeure, the The Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include.<br>(a) the amounts payable for any work carried out for which unit rates or prices are stated in the Contract;<br>(b) the cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Procuring Entity when paid for by the Procuring Entity, and the Contractor shall place the same at the Procuring Entity's disposal;<br>(c) other costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;<br>(d) the cost of removal of Temporary Works and Contractor's Equipment from the Site; and<br>(e) the cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination. |
| 77. Property | 77.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor's default stated under GCC Sub Clause 73.1. |
| 78. Frustration | 78.1 If the Contract is frustrated by the occurrence of a situation of Force Majeure as defined in GCC Sub Clause 56, the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any work carried out afterwards to which a commitment was made. |
| 79. Amendment to Contract | 79.1 The amendment to Contract shall generally include equitable adjustments in original Contract price, Delivery and Completion Schedule and, any other changes acceptable under the conditions of the Contract.<br>79.2 The Procuring Entity shall amend the Contract, incorporating the changes approved in accordance with the Delegation of Financial Power or sub-delegation thereof and, introduced to the original terms and conditions of the Contract. |
| 80. Compensation Events | 80.1 The following shall be Compensation Events:<br>(a) The Procuring Entity does not give access to or possession of the Site or part of the Site by the Site Possession Date stated in the GCC Sub Clause 18.1;<br>(b) The Procuring Entity modifies the Schedule of other Contractors in a way that affects the works of the Contractor under the Contract;<br>(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time;<br>(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects;<br>(e) The Project Manager unreasonably does not approve a subcontract to be let, if applicable;<br>(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Notification of Award from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site; Other Contractors, public authorities, utilities, or the Procuring Entity do not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor;<br>(g) The advance payment is delayed;<br>(h) The effects on the Contractor of any of the Procuring Entity's Risks;<br>(i) The Project Manager unreasonably delays issuing a Completion Certificate;<br>(j) A situation of Force Majeure has occurred, as defined in GCC Clause 56; and |
| | 80.1 The following shall be Compensation Events:<br>(k) Other Compensation Events described in the Contract or determined by the Project Manager in the PCC shall apply. |
| | 80.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended, only on justifiably acceptable grounds duly recorded.<br>80.3 As soon as the Contractor has provided information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost, the Project Manager shall assess it, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.<br>80.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Project Manager. |
| 81. Contractor's Claims | 81.1 If the Contractor considers himself to be entitled to any extension of the Completion Time and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Procuring Entity, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty-eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance<br>81.2 If the Contractor fails to give notice of a claim within such period of twenty-eight (28) days, the Intended Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim.<br>81.3 Within forty-two (42) days after the Contractor became aware or should have become aware of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed, for settlement. |
| 82. Settlement of Disputes | 82.1 Amicable Settlement:<br>The Procuring Entity and the Contractor shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation. |
| | 82.2 Adjudication<br>(a) If the Contractor /Procuring Entity believe that amicable settlement of dispute is not possible between the two parties, the dispute shall be referred to the Adjudicator within fourteen (14) days of first written correspondence on the matter of disagreement; |
| | 82.2 Adjudication<br>(b) The Adjudicator named in the PCC is jointly appointed by the parties. In case of disagreement between the parties, the Appointing Authority designated in the PCC shall appoint the Adjudicator within fourteen (14) days of receipt of a request from either party; |
| | 82.2 Adjudication<br>(c) The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it;<br>(d) The Contractor shall make all payments (fees and reimbursable expenses) to the Adjudicator, and the Procuring Entity shall reimburse half of these fees through the regular progress payments; |
| | 82.2 Adjudication<br>(e) Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor the Adjudicator shall be designated by the Appointing Authority designated in the PCC at the request of either party, within fourteen (14) days of receipt of a request from either Party. |
| | 82.3 Arbitration<br>(a) If the Parties are unable to reach a settlement under GCC Clause 82.1 or 82.2 within twenty-eight (28) days of the first written correspondence on the matter of disagreement or within twenty-eight (28) days of the date of decision made by the Adjudicator as per GCC Sub Clause 82.2(c), then either Party may give notice to the other party of its intention to commence arbitration in accordance with GCC Sub Clause 82.3(b);<br>(b) The arbitration shall be conducted in accordance with the Arbitration Act (Act No 1 of 2001) of Bangladesh as at present in force and in the place shown in the PCC. |



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